

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GILBERT N. FAFORD II,

Plaintiff,

v.

GRAND TRUNK WESTERN RAILROAD
COMPANY, d/b/a CN,

Defendant.

Case No. 2:19-cv-10523

Honorable David M. Lawson

Arvin J. Pearlman (P18743)
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GTW'S SUPPLEMENT TO SECOND MOTION TO COMPEL

Defendant Grand Trunk Western Railroad Company ("GTW"), through counsel, hereby submits its Supplement to GTW's Second Motion to Compel, states as follows that:

1. On February 19, 2020, the Court entered its Order Withdrawing Reference (ECF No. 36), Dismissing Discovery Motion, Granting In Part Corrected Discovery Motion, Granting In Part Motion to Extend Deadlines, and Amending Scheduling Order (ECF No. 45) ("Order Granting Discovery Motion"). On page 2 of this Court's Order Granting Discovery Motion (*Id.*,

PageID.393), this Court ordered that plaintiff shall “Furnish to counsel for the defendant copies of all debit card and credit card statements from January 1, 2017 through the present date.”

2. Plaintiff produced debit and card statements from November 29, 2016 to January 24, 2020 for his **Capital One MasterCard**; from January 2, 2017 to January 31, 2020 for his **Community Choice Credit Union**; and from March 15, 2019 to February 8, 2020 for his **Cabela’s Club Classic card**. However, plaintiff did not produce records subsequent to the above dates, despite the request of GTW counsel. (GTW’s Second Motion to Compel, Ex. 1, PageID.785, GTW counsel email of **October 9, 2020**)

3. As a result of plaintiff’s failure to supplement or to respond to GTW counsel’s request by producing records “through the present date,” GTW had to file its Second Motion to Compel in which it sought “...(1) plaintiff’s **recent credit and debit card statements** in accordance with the Court’s prior Order granting GTW’s first Motion to Compel,... (*Id.*, PageID.770, pg. 5) (emphasis added) Further, in its Second Motion to Compel, GTW noted that “plaintiff’s credit and debit card statements, which plaintiff has already been compelled by this Court to produce, are evidence of his physical and other activities.” (*Id.*, PageID.771, pg. 6)

4. In his Response to Defendant’s Second Motion to Compel (ECF No. 90), plaintiff counsel asserted that “...Plaintiff **agrees to supplement his production of debit and credit card statements**, as previously ordered discoverable by the Court. ECF No. 45 at pg. 2, PageID.393.” (*Id.*, PageID.1108, pg. 5) (emphasis added) It is notable that plaintiff counsel agreed to this production only **after** GTW filed its Second Motion to Compel on **November 11, 2020** and **not in response** to the **August 5, 2020** good faith resolution letter or to the **October 9, 2020** email (ECF No. 78-1, PageID.785).

5. While plaintiff **cites to** this Court's Order Granting Discovery Motion, specifically to the page on which the specific language regarding production of financial appears (ECF No. 45, PageID.393), plaintiff **failed to comply** with this Court's Order where he served updated financial records **that are redacted**. Specifically, plaintiff **redacted large sections** of the Community Choice Credit Union records. Attached hereto are exemplar records from February 2020 which contain large redactions. (**Ex. 1** hereto) The records for **every month** of the Community Choice Credit Union were **redacted**. Plaintiff's supplemental production of Cabela's Club Classic care records were not redacted.

6. **Nowhere** in this Court's Order Granting Discovery Motion does this Court permit redactions. Further, **at no point** after issuance of this Court's Order Granting Discovery Motion did plaintiff file a motion for recommendation seeking to redact **large sections** of the records.

7. Further, in his **initial** production of financial records subsequent to this Court's Order Granting Discovery Motion, plaintiff also produced records from **Capital One MasterCard** and **Kohl's credit card**. In plaintiff's recent production--**only after** GTW filed its Second Motion to Compel on November 11, 2020--plaintiff **failed to produce** updated records from these two entities, despite the explicit language in this Court's order Granting Discovery Motion, to wit: "...through the present date." (ECF No. 36) Further, plaintiff provided **no explanation** for this blatant oversight.

WHEREFORE, for the reasons stated herein and in GTW's Second Motion to Compel, Grand Trunk Western Railroad Company respectfully requests that this Honorable Court order plaintiff to produce **updated records** from "all debit card and credit card statements" used by plaintiff and/or his wife "from January 1, 2017 to the present," as this Court previously ordered.

Respectfully submitted,

Dated: January 13, 2021

GALLAGHER SHARP LLP

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BRIEF IN SUPPORT OF GTW'S SUPPLEMENT TO SECOND MOTION TO COMPEL

GTW hereby relies on its Second Motion to Compel, its Memorandum in Support of Its Second Motion to Compel, and this Court's Order Withdrawing Reference (ECF No. 36), Dismissing Discovery Motion, Granting In Part Corrected Discovery Motion, Granting In Part Motion to Extend Deadlines, and Amending Scheduling Order.

Dated: January 13, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dawn Taylor, certify that on the date shown below, I served a copy of the foregoing ***GTW's Supplement to Second Motion to Compel*** and ***Brief In Support*** by electronically filing same with the Clerk of the U.S. District Court Eastern District of Michigan via the Court's CM/ECF system which shall then send notification of such filing to all counsel of record. The statement above is true to the best of my knowledge and information.

Dated: January 13, 2021

/s/ Dawn Taylor
Dawn Taylor